



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

January 22, 1998

Ms. Ann Diamond  
Chief of Litigation — Civil Division  
Tarrant County District Attorney's Office  
401 Belknap  
Fort Worth, Texas 76196-0201

OR98-0216

Dear Ms. Diamond:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 111880.

The Tarrant County District Attorney's Office (the "district attorney") received an open records request for "all files, records, and any other documents in the possession of the Tarrant County District Attorney's Office pertaining to the arrest, investigation, and trial of" a specified criminal defendant. You contend the requested information may be withheld from the public pursuant to sections 552.101 and 552.103 of the Government Code.

You contend that section 552.103 of the Government Code excepts the district attorney's litigation file in its entirety because the information relates to a pending habeas corpus action filed on behalf of a criminal defendant. You further contend that pursuant to *Curry v. Walker*, 873 S.W.2d 379, 381 (Tex. 1994), the district attorney's litigation file, taken as a whole, constitutes the work product of the district attorney, and as such is excepted from required public disclosure. Although section 552.103 does protect work product relating to pending litigation, *see* Open Records Decision No. 575 (1990), this office believes that the work product analysis you argue is more properly raised under section 552.111 of the Government Code.<sup>1</sup> Open Records Decision No. 647 (1996).

The work product doctrine is applicable to litigation files in criminal as well as civil litigation. *Curry v. Walker*, 873 S.W.2d 379, 381 (Tex. 1994) (*citing United States v.*

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<sup>1</sup>Because we resolve your request under section 552.111, we need not address your other arguments against disclosure.

*Nobles*, 422 U.S. 225, 236 (1975)). In *Curry*, the Texas Supreme Court held that a request for a district attorney's "entire file" was "too broad" and, citing *National Union Fire Insurance Co. v. Valdez*, 863 S.W.2d 458, 460 (Tex. 1993), held that "the decision as to what to include in [the file] necessarily reveals the attorney's thought processes concerning the prosecution or defense of the case." *Curry*, 873 S.W.2d at 380. Because the requestor in this instance seeks all the information in a particular litigation file, we conclude that the district attorney may withhold the entire file pursuant to section 552.111 of the Government Code as attorney work product.<sup>2</sup>

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Vickie Prehoditch  
Assistant Attorney General  
Open Records Division

VDP/RWP/gle

Ref.: ID# 111880

Enclosures: Submitted documents

cc: Mr. John C. Boston  
Attorney at Law  
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(w/o enclosures)

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<sup>2</sup>We note, however, that a specifically requested document is not automatically considered to constitute work product simply because it is a part of an attorney's litigation file. *Valdez*, 863 S.W.2d at 461. Thus, an individual may request specific documents or categories of documents contained in the litigation file without necessarily implicating the work product privilege. The party opposing disclosure in such a case has the burden of explaining the applicability of the privilege. *Id.*